

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TERRELL MITCHELL, : **CIVIL NO. 3:15-cv-2167**

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:

Plaintiff :

: **(Judge Munley)**

v.
:
:

JOHN KERESTES, SUE :

WISLOSKY, :

:
:

Defendants :

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ORDER

AND NOW, to wit, this 9th day of December 2015, in accordance with the foregoing Memorandum, it is hereby ORDERED that:

1. Plaintiff's complaint is DISMISSED without prejudice pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).
2. If plaintiff can correct the deficiencies of his complaint, he may FILE a motion to reopen this matter on or before December 28, 2015. Said motion shall be accompanied by a proposed amended complaint.
3. Any proposed amended complaint shall contain the same case number that is already assigned to this action (3:15-cv-2167) and shall be direct, concise, and shall stand alone without reference to any other document filed in this matter. See FED. R. CIV. P. 8(e).
4. The Clerk of Court is directed to CLOSE this case.

5. Any appeal from this order is DEEMED frivolous and not in good faith.
See 28 U.S.C. § 1915(a)(3).¹

BY THE COURT:

s/James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court

¹ The Court notes that “ ‘[g]enerally, an order which dismisses a complaint without prejudice is neither final nor appealable because the deficiency may be corrected by the plaintiff without affecting the cause of action.’ . . . The dispositive inquiry is whether the district court’s order finally resolved the case.” Martin v. Brown, 63 F.3d 1252, 1257–58 (3d Cir. 1995) (quoting Borelli v. City of Reading, 532 F.2d 950, 951 (3d Cir. 1976)) (other citations omitted). In the matter *sub judice*, if plaintiff can correct the deficiencies of his complaint, he may file a motion to reopen his case accompanied by a proposed amended complaint.